

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Edward A. Garvey
Marshall Johnson
LeRoy Koppendrayner
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Qwest Wholesale Service
Quality Standards

ISSUE DATE: May 29, 2002

DOCKET NO. P-421/M-00-849

ORDER DENYING RECONSIDERATION
AND MODIFYING ORDER ON OWN
MOTION

PROCEDURAL HISTORY

On June 28, 2000, the Commission issued an Order approving a settlement and stipulation in the U S WEST- Qwest merger.¹ The Commission's Order required the company to file proposed wholesale service quality standards, participate in an expedited proceeding to set permanent wholesale service quality standards, and waive any right to a contested case proceeding in that filing. The current proceeding (Docket No. P-421/M-00-849, also known as the Qwest Wholesale Service Quality Docket) is a result of that Order.

On August 15, 2000, in response to an AT&T complaint regarding special access service quality (Docket No. P-421/C-99-1183), the Commission determined that it would investigate the need for special access service quality standards for Qwest in concert with the Qwest Wholesale Service Quality Docket.

From April 30 through May 3; September 24 and 25; and October 5 and 8, 2001, the Administrative Law Judge (ALJ) now Commissioner Reha facilitated evidentiary proceedings. During the September 24, 2001 hearing, WorldCom/Time Warner Telecom presented their proposed measurement plan for special access.

On March 4, 2002, the Commission issued its ORDER SETTING REPORTING REQUIREMENTS AND FUTURE PROCEDURES (Reporting Order or Order). In that Order, the Commission required Qwest to report performance data regarding wholesale special access services as requested by WorldCom - Time Warner Telecom. The Commission required that monthly reporting begin this June.

¹ Docket No. P-3009,3052,5096,421,3017/PA-99-1192.

On March 19, 2002, Qwest requested that the Commission reconsider its March 4, 2002 Order. Without waiving its objections to any proposal for reporting concerning special access services, Qwest proposed an alternative special access reporting system.

On March 28, 2002, WorldCom and Time Warner Telecom filed a joint response opposing Qwest's motion and AT&T filed comments supporting the WorldCom - Time Warner Telecom position on the matter.

On April 18, 2002, the Commission met to hear the matter. At the request of the parties, the Commission tabled the matter and directed the parties to file a progress report before May 2, 2002.

On April 29, 2002, WorldCom reported its view that Qwest's recent proposal ignored the history and context of these proceedings and was not in the spirit of compromise. WorldCom stated that Qwest's proposal was unacceptable because it did not take the Commission's Order into account.

On May 1, 2002, Time Warner reported its view that Qwest's most recent proposal has given it no reason why it should not continue to oppose Qwest's motion for reconsideration.

Also on May 1, Qwest reported that it had discussed a possible resolution to the motion to reconsider with WorldCom and Time Warner, advised AT&T of these discussions, and that the parties had been unable to reach a mutually satisfactory resolution.

The Commission met to consider this matter on May 2, 2002.

FINDINGS AND CONCLUSIONS

I. QWEST'S PETITION FOR RECONSIDERATION

The Commission has carefully reviewed Qwest's petition and all the arguments contained therein. Qwest's arguments do not persuade the Commission that the fundamental decisions made in the March 4, 2002 Order warrant reconsideration.

Accordingly, the Commission will deny Qwest's motion for reconsideration and affirm the conclusions and rationale of the March 4, 2002 Order except as specifically adjusted in Part III of this Order. See also Ordering Paragraph 2, below at page 4 of this Order.

II. QWEST'S ALTERNATIVE PROPOSAL

As part of its Petition for Reconsideration of the Commission's March 4, 2002 Order, Qwest submitted an alternative special access reporting proposal for the first time. Qwest had the opportunity to submit this proposal earlier in the proceeding when the proposal would have had the benefit of proper evidentiary introduction and development. Despite having the opportunity to do so, Qwest failed to submit its proposal during the record-making/evidentiary process and waited until after the Commission had rendered its decision on the record established in this docket.

In orderly administrative process, motions for reconsideration should be limited to arguments directed to the merits of the Commission's Order. Effective administrative practice depends on an ordered process in which there is a time for proposals, a time for submission of evidence, a time for written and oral arguments, a time for a decision and, where specifically authorized such as the present, a time for parties to request reconsideration of that decision.

In this case, Qwest has sought to insert a proposal during the request-for-reconsideration phase of this proceeding, i.e. long after the time for doing so has passed. The Commission finds that Qwest has provided no sound reason for doing so.

In proceedings before the Commission, time limits are regularly established for filing comments and reply comments. See, for instance Minn. Rules, Part 7829.1400 regarding comments on miscellaneous tariff or price list filing and Minn. Rules, Part 7829.1700 regarding formal complaints. Likewise, when a matter is referred to the Office of Administrative Hearings (OAH), the Administrative Law Judge (ALJ) assigned to the case sets timeframes for the introduction of evidence, comments of the parties, etc.

The Commission is particularly averse to reversing the orderly development of this docket in this case. Qwest was on full notice that the Commission would be deciding this case on the basis of the record established before the ALJ. In referring this matter to the OAH in its March 19, 2001 Order, the Commission did so based on a procedure proposed by all the parties, including Qwest. In its Order, the Commission stated a key purpose of the referral identified by all parties was to develop a record on which the Commission could rely. March 19, 2001 Order at page 3.

Further, following proceedings before the ALJ, the parties filed extensive post-hearing comments. This period of post-hearing comments also was part of the decision-making process proposed by the parties, including Qwest, and approved by the Commission in its March 19, 2002 Order. And before the Commission issued the March 4, 2002 Order, the Commission heard extensive argument from the parties, including Qwest, at the Commission's February 5, 2002 hearing. During none of this agreed-upon decision-making time-frame, did Qwest make the proposal it now wishes the Commission to consider.

Absent a showing of a compelling reason to do so, such as that the information could not have been introduced during the record-formation stage of the proceeding, consideration of a proposal filed months after the record closed in hearings before the ALJ and long after the Commission has heard argument based on that record and rendered a decision based on that record would be inconsistent with appropriate administrative process. Qwest has shown no compelling reason to consider its untimely proposal and indeed appears to have withheld the proposal for strategic reasons, to give added emphasis to its objection to the Commission's jurisdiction over special access reporting.

The Commission has shown appropriate administrative flexibility regarding Qwest's proposal. Despite its untimely filing, the Commission, at the request of the parties, deferred its consideration of Qwest's petition for reconsideration to allow the parties to explore whether Qwest's untimely-filed special access reporting proposal could provide a basis for a settling this matter to all parties' satisfaction.

Since the parties have reported that Qwest's special access reporting proposal does not form the basis for such an agreement, since the proposal has no basis in the evidentiary record of this matter, and since no persuasive arguments have been presented indicating that the special access reporting system approved in the March 4, 2002 Order is fundamentally flawed, unreasonable, or inappropriate, the Commission will consider the Company's proposal no further.

III. RECONSIDERATION ON ITS OWN MOTION

There are several relatively minor aspects of the March 4, 2002 Order that the Commission will clarify or adjust on its own motion:

- Based on input from the parties and further consideration, the Commission finds it more appropriate to reduce the number of companies to whom Qwest should be required to provide the identified special access information to three: WorldCom, Time Warner, and AT&T, the only companies that have sought it in this case. Any additional company seeking receipt of this information may petition the Commission for an Order directing Qwest to provide reports to that company.
- The Commission will clarify that the proposal referred to in Ordering Paragraph 3 of the March 4, 2002 Order (page 4) was submitted by WorldCom and Time Warner and that the document attached to the Order is titled "ILEC Performance Measurements."
- The Commission will also clarify that no reporting regarding switched access is required.
- Finally, the Commission will clarify that the required special access reporting will begin with the first full month that begins 60 days from the date of this Order.

ORDER

1. The Commission hereby denies Qwest's petition for reconsideration. The requirements of Commission's March 4, 2002 Order remain in full force and effect, except as clarified on the Commission's own motion in the following Ordering Paragraph.
2. On its own motion, the Commission clarifies that
 - a. switched access is excluded from the reporting requirements;
 - b. Qwest shall file performance data on its provision of wholesale access services, as proposed by Time Warner and WorldCom, in the aggregate and individually for each wholesale customer, using the business rules and standards set forth in the document titled "ILEC Performance Measurements," except that the number of companies to whom special access performance reports must be provided is reduced to three: WorldCom, Time Warner, and AT&T;

- c. additional companies desiring special access performance reports must file a request with the Commission;
 - d. the proposal referred to in Ordering Paragraph 3 of the March 4, 2002 Order (page 4) was submitted by WorldCom and Time Warner;
 - e. the document attached to the March 4, 2002 Order is titled "ILEC Performance Measurements"; and
 - f. the reporting required by this Order shall begin on August 1, 2002 (the first full month that begins 60 days from the date of this Order), and the data shall be reported by the end of the following month (i.e. September 30, 2002).
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), (651) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).